

# CVPIA IMPLEMENTATION

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OVERSIGHT HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER  
AND POWER RESOURCES  
OF THE  
COMMITTEE ON RESOURCES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION  
ON  
**IMPLEMENTATION OF THE CENTRAL VALLEY  
PROJECT IMPROVEMENT ACT**

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APRIL 18, 1996—WASHINGTON, DC

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**Serial No. 104-72**

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# CVPIA IMPLEMENTATION

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THURSDAY, APRIL 18, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON WATER  
AND POWER RESOURCES, COMMITTEE ON RESOURCES,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 1:34 p.m., in room 1324, Longworth House Office Building, Hon. John T. Doolittle (Chairman of the Subcommittee) presiding.

Mr. DOOLITTLE. The Subcommittee on Water and Power Resources will come to order.

The Subcommittee is meeting today to hold an oversight hearing on the results and status of the administrative process on implementation of the Central Valley Project Improvement Act.

## **STATEMENT OF HON. JOHN T. DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER RESOURCES**

Mr. DOOLITTLE. This proceeding today will consist of an oversight hearing on the CVPIA, followed by a legislative hearing on five bills. Our witness for the oversight hearing will be the Deputy Secretary of the Interior, Mr. Garamendi.

Early last year a number of California water users contacted me and other California Members asking us to address significant and specific problems which are being experienced under the Central Valley Project Improvement Act. On June 21st, 1995, after reviewing the problems presented and determining that there was little hope of resolving the issues administratively, I, along with a bipartisan group of Members, many of the Members of this Committee, introduced the Central Valley Project Reform Act of 1995.

Reclamation officials quickly informed the Subcommittee in July of that year that administrative solutions would be implemented by October 1995 to solve the identified problems. In August of 1995, the Bureau informed our staff that such solutions could be implemented by the end of the year. And, finally, in early September of last year, Deputy Secretary Garamendi met with me to request that I delay action on the reform bill for six months so he could personally work within the administration to develop and provide solutions to make it unnecessary to move legislation. Senator Feinstein underscored that need by working with the stakeholders to use March 31, 1996, as a deadline to identify clearly which issues could be resolved administratively and which required legislation.

More than seven months have now passed since that September, 1995, meeting with Deputy Secretary Garamendi. It is my understanding that over 100 meetings have been held. Department and

stakeholder representatives have spent thousands of hours on this administrative process.

With Secretary Garamendi's personal commitment and the massive efforts that have been spent, I look forward to his report today providing the solutions this process was designed to deliver.

Mr. Garamendi, I do hope that we'll hear today specific solutions, not yet another request to defer our work while the Department continues to ponder solutions.

I look forward to hearing from the witness, but, first, I will recognize the ranking member for his statement.

**STATEMENT OF THE HONORABLE PETER A. DeFAZIO, A U.S. REPRESENTATIVE FROM OREGON**

Mr. DeFAZIO. I thank the Chair. I'll have a brief statement and then yield to the ranking member of the Committee, Mr. Miller.

I have some concerns regarding H.R. 2392, and, hopefully, they'll be addressed by witnesses later, but the concern is that the narrowly-drawn bill—if we were to bring every minor dispute before Congress for legislation, ignoring larger concerns, I think we might create a problem in this area, and would suggest that it's premature to pass this bill.

I think there are a number of diverse interests involved: the tribe, those who are concerned about the Umatillo water flows and quality, and fisheries, the city of Pendleton, the project itself, and the irrigators who need or want a boundary expansion. And if we just go to one of those five interests, I think we may be creating some longer-term problems for that area.

And on the conveyance bill for Mr. Skeen, I'm concerned that we're conveying only part of a project and assets that might be very valuable and accepting Federal liability, and would question whether or not this is a good precedent. We've been considering whether and how to turn over projects, but to turn over only parts of a project seems quite problematic to me.

With that opening concern, I'd yield to the gentleman from California.

**STATEMENT OF THE HONORABLE GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. MILLER. I thank the gentleman for yielding and I thank the Chairman for calling this hearing, and I welcome the opportunity to review the implementation of the Central Valley Project Improvement Act.

The CVPIA has changed the way California water is managed. That was the intent when the Congress overwhelmingly passed it in 1992 and when President Bush signed it into law. The CVPIA brings one of the largest water systems in the Nation into conformity with modern water management.

Let's remember what was happening before the CVPIA. When the project was created in the 1930's, we didn't worry about competing needs, about the impact on wetlands and fish and wildlife, about billions of dollars in subsidies, or a host of other troubling issues that have plagued the CVP in recent decades. Nor did we envision a State as populated or an economy as diverse as California's. No one who took part in the 15-year struggle to pass this leg-

isolation believed that changing the old ways would be easy, and it has not proven to be so.

Shortly after the law was enacted, it was challenged in court by some of the water users. Many of the parties who would be responsible for CVP implementation spent considerable time and 1994 developing the historic Bay Delta Accords that were signed into many competing—were signed by many competing interests in December of that year. Now we are directing our attention to resolving the complex issues that involve water supply, subsidies, environmental protection, and in the context of a growing and diverse State.

The fact that these issues are contentious to discuss and challenging to resolve does not diminish the necessity of reform nor does it warrant the effective repeat of the CVPIA or a return to business as usual. That is not acceptable; it is not responsible, and it is not going to happen.

No one party to the debate over CVPIA implementation can expect to have its way all the way. What we have needed, and what we now have in the Garamendi process, is a mechanism for assuring that all parties have the opportunity to participate in the creation of an implementation plan that balances the competing interests and the needs, which includes public accountability of our State. A collaborative stakeholder process can work. We have seen that in the process that yielded the Bay Delta Accords. Such a process can only work if there is a commitment from the participants and if the leadership is prepared to direct the discussion into concrete proposals. It cannot succeed if the participants are prepared to walk away when the discussions become difficult or when they get restless. If there is no consensus within the consensus-seeking process, there will be no legislative consensus and there will be no resolution of the issues.

I have worked with Secretary Garamendi on complex water issues since the 1970's, and I know that he brings to this task great familiarity with both the policy questions and the personalities who are part of the stakeholder process, and he has their respect. I also know that he brings a strong sense of public responsibility and integrity and a belief that we must work cooperatively to find common solutions to these complicated issues.

The goal of the stakeholder process, as I understand it, is to develop rules of implementation of the CVPIA, not to plot the destruction of these long-needed reforms. This process is being closely watched on Capitol Hill and in California, and it is not just a debate between the water contractors and the environmentalists. Many other California economic interests are also involved, such as the over 7,000 people who have signed petitions and sent them to our Senate delegation and sent them to Members of the House who are involved in recreational fishing, commercial fishing, that are beneficiaries of the new regimes to be set up under the CVPIA. These people also have a stake, both respect to the livelihoods and the ability to have recreation opportunities for them and their families.

I look forward to Secretary Garamendi's testimony this morning and to the continuation of these efforts to secure agreement among the diverse California community, so that the CVPIA reforms can finally be put into place.

And I thank the gentleman from Oregon for sharing his opening statement time with me.

[Statement of Mr. Farr follows:]

STATEMENT OF HON. SAM FARR, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, thank you for this opportunity to comment on the issues before the Subcommittee today. I am glad that the Subcommittee is continuing to review the implementation of the Central Valley Project Improvement Act (CVPIA) and the two Bureau of Reclamation bills before us today.

I will focus my comments on H.R. 2781 and H.R. 3041. However, before I do so, I would like to make a few brief remarks concerning the implementation of the CVPIA. The fair and timely implementation of this law is crucial to California's environment, California's commercial fishing industry, and California's agricultural industry. It is crucial that this Subcommittee continue a diligent oversight of this implementation process.

However, it is now clear that there are several problems with the CVPIA. Some of these problems are inherent in implementing the major reforms outlined by the CVPIA and can be resolved administratively. Several other problems simply stem from shortcomings in the underlying legislation and require legislative fixes. The ongoing consensus process in California sponsored by the Department of the Interior will, I hope, allow the CVP's stakeholders to delineate which issues can be resolved administratively, and which require legislation to remedy. I support this process and hope that the Subcommittee will not act in a way that would prejudice the outcome of this process or that would weaken the environmental gains of the CVPIA.

[The remainder of statement was on the legislative hearing.]

Mr. DOOLITTLE. Thank you.

Mr. Secretary, we'd invite you to come forward. I know you're accompanied by Mr. Patterson and Mr. Hall. Would you like to have them come forward at the same time?

If you would, please remain standing and raise your right hand.  
[Witnesses sworn.]

Mr. DOOLITTLE. Thank you. Let the record reflect all have responded in the affirmative.

Under our Committee rules, witnesses normally limit their oral statements to five minutes. In this case, Mr. Secretary, you're really the main witness, and we've budgeted a certain amount of time with the Members for asking the questions. We'll try to live by the five-minute rule and just repeat the cycle as we feel desirable. With that, you're recognized for your testimony.

**STATEMENT OF JOHN GARAMENDI, DEPUTY SECRETARY OF THE INTERIOR, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY ROGER K. PATTERSON, BUREAU OF RECLAMATION, AND DALE HALL, U.S. FISH AND WILDLIFE SERVICE**

Mr. GARAMENDI. Mr. Chairman and members of the Committee, it's a pleasure to be with you. I had anticipated for some time this opportunity, and I'm delighted that it is today.

All of you are familiar with the history of California and the water wars that have plagued the State for generations. This situation was what was facing California a year ago. We were on the brink of an additional or new war.

In the fall of last year, President Clinton visited the Central Valley and Fresno. He met with many of the interested parties, particularly the agricultural community. After hearing from them about the concerns that they had with the implementation of the CVPIA, he asked me to get involved and to seek a consensus and a resolution of the problems.

Shortly thereafter, we undertook a process of bringing together all of the stakeholders to find the zone of reasonableness, to find a consensus. Fortunately for California, all of the stakeholders at that time in the fall were willing to participate. The first two months were taken up in trying to get a listing of the issues. That process led to more than 150 specific issues of concern being written down. The winnowing of those concerns, then, commenced through a series of task forces. As you said, Mr. Chairman, hundreds, if not thousands, of hours have been spent; hundreds of meetings have taken place. Seven group meetings, one a month over the last seven months, have occurred.

And in the process and the passage of time and the enormous energy and work and considerable talent that was put to the task, the zone of reasonableness for each of the 12 major policy areas has been fairly well understood and described. Very good progress has been made in understanding the issues from the perspective of the often very disparate points of view.

From this point forward—actually, from the end of last month forward—a corollary to the process was established, and I believe most, if not all, of the participants, all of the stakeholders, want the process to go forward. Essentially, what we propose to do is over the next few weeks pull together and define as best we can the ideas, the solutions that have been proposed by the stakeholders in their task forces, and then take those back to the stakeholders and commence a final round of effort to seek the consensus that is necessary.

I would only point out in closing in my opening statement that the process has shown ever more clearly the necessity of finding a consensus. Mr. Miller's statement about a lack of consensus and the results of that shortfall of consensus is quite accurate. Another war would commence; it's unlikely that either side would gain a long-term victory, and California, its economic development, its environment, would clearly suffer.

We have made good progress. We are obviously not home yet on many of the key issues, but it is quite clear that a good definition of the problem is understood and the outline of the solutions is now apparent to us.

And, with that, Mr. Chairman, I'd be happy to answer any questions you might have. And, as you said a moment ago, joining me are two of the key players from the Government that have been working very hard on this. Mr. Patterson from the Bureau of Reclamation, who heads up the regional office, has been an extraordinary asset, together with all of his people, and Dale Hall from the regional office of the Fish and Wildlife Service providing equally valuable and good input of his own, as well as from his staff.

[The statement of Mr. Garamendi may be found at end of hearing.]

Mr. DOOLITTLE. Thank you very much, Mr. Secretary.

We might note that Mr. Patterson is the Regional Director of the Mid-Pacific Region for the Bureau of Reclamation and Mr. Hall is the Assistant Regional Director of Ecological Services for Region 1 for the U.S. Fish and Wildlife Service.

When discussions were held about the problems with implementing the CVPIA at the time we introduced the legislation, we were

told we'd have solutions in place by October. That date then slipped to December of 1995, and then, we were talking about March of 1996. I think there was a clear expectation, not only on my part, but on the part of the various people involved in this process, that we would achieve from your forum the following results:

One, the resolution of implementation conflicts and, two, the identification of those issues for which only a legislative fix will work, and thirdly, that a process for reaching consensus among the various stakeholders on legislation would be pursued.

On the second item, have you identified any issue which would require legislation to resolve, and what do you see as the prospect for consensus developing on CVPIA legislation?

Mr. GARAMENDI. At this time it is our view that none of the issues that are before us, the 12 constellation of issues, as I call them, and the dozens of sub-issues in each of those constellations, are ripe for a legislative fix. There is not a consensus on the key issues, particularly those that would be in the legislative arena. And, beyond that, it is my personal opinion that greater certainty and reliability and long-term solutions can be found in the administrative arena rather than the legislative arena.

Perhaps the single issue that most people would point to as a legislative item would be the contract issue. I would only point out, in response to those who want to go to a legislative solution on contracts, that, first, there is anything but a consensus at the moment on how to deal with contracting. That is probably the single issue upon which there is the least consensus.

And, beyond that, it's unlikely that it would be legislatively successful in the present environment, and in the last 10 years legislation has dramatically altered the CVP three times. So legislation, in and of itself, is no certainty.

However, the route we are taking with regard to that issue is one in which the contracts would be written in such a way as to provide a significant level of certainty beyond the 25 years, but at the same time taking into account the rapidly-changing nature of the State and the need for environmental modifications over time, as well as the needs of the urban sector which are growing.

We think that greater certainty can actually be achieved with those items taken into account in a contractual process. And so we are moving in that direction.

With regard to the first part of your question, which dealt with the schedule from this point forward, we have laid out a very specific schedule and agenda, and we intend to stay with that.

Mr. DOOLITTLE. I'm aware that you indicated recently that there would be such a schedule, but no one seems to have seen it. Is it in print, or can you share with us dates when we can expect these things?

Mr. GARAMENDI. We had hoped you would ask.

[Laughter.]

Mr. GARAMENDI. I would present you with the schedule that we have devised at the request of the stakeholders. This is the first time that it has been publicly presented, and I must warn you that it has not gone back to the stakeholders, which is our normal process, to seek their input and suggestions about it. But, nonetheless, it is before you, and, hopefully, I didn't give away my only copy.



It is a very aggressive schedule that would cause considerable work—in fact, more than perhaps we should undertake—over the next several months. And it would culminate in the publishing of final rules in the **Federal Register**.

It begins immediately, as I said in my opening testimony, with the effort by the team in the Bureau of Reclamation, together with Fish and Wildlife and others, to draft specific administrative proposals that are derived from the work of the task forces, their input, their wisdom, and their proposed solutions. That would then be worked on by the individual task forces. We would hope that this process of drafting and then further review and modifications, if necessary, would be completed by June, in mid-June. The initial work should be done by the 1st of June.

Mr. DOOLITTLE. Well, my time is up, but we can follow up more extensively when we get back to me again. Let me just ask, Mr. Secretary, it looks like this schedule is going to result in a rule-making process, which would commence in December of this year. That can be rather lengthy, can it not? You show here the time between draft rules and final rules as being December through April of the following year, but it's entirely possible, is it not, for that to drag out a number of months more?

Mr. GARAMENDI. Actually, the rulemaking process started, I believe, nearly two years ago, and the hearings—excuse me, not the hearings—the full forums and the meetings that have taken place have been part of that rulemaking process, and it was set up that way from the outset. So we're well into the rulemaking process already.

As you run down through this schedule, you'll find that we will in the fall put forth the draft rules and then finalize them, but the preliminary work is now underway, and has been for some time. In fact, the full course of these forums has been part of that process.

I would want to add that the rulemaking process is essential to CVPIA as well as the earlier laws with regard to the CVP require that we draft rules, draft and promulgate rules, for the implementation of both the changes and the—well, the changes that have occurred in the law.

Mr. DOOLITTLE. So are you confident, then, of this April, 1997, date you show here for the final rules to be published?

Mr. GARAMENDI. We believe we can stay to this schedule. My confidence level waxes and wanes with the battles that occur on individual issues. Having gone through an unanticipated two-month discussion on a subset of issues—I'm confident we can do it.

[Laughter.]

Mr. DOOLITTLE. Thank you.

The gentleman from California, Mr. Miller, is recognized.

Mr. MILLER. No questions at this time, Mr. Chairman.

Mr. DOOLITTLE. OK, then our next member to ask questions will be Mr. Pombo.

Mr. POMBO. You know what's coming, Roger.

How in this process—and, as we've gone through this for several months, one of the issues that I've repeatedly asked about and been told that it could be handled on an administrative basis dealt with Stockton East. And I know Mr. Garamendi is very well aware

of this Stockton East situation. But how in this process does the administrative solution to Stockton East fit in? And at what point can we expect to see something come out on that?

Mr. GARAMENDI. There are two basic ways in which the Stockton East issue can be resolved—perhaps three basic ways, but two that are pertinent at the moment. The first is the issue of the Stanislaus River and the flows in the Stanislaus River. Those flows are very much part of our discussion, and the amount of water required for environmental purposes or for expert purposes, as well as for the use in San Joaquin and Stanislaus Counties, is part of the discussion. That is an administrative issue; I seriously doubt that there is a good legislative solution to that fix. It simply has to be worked through in the process that we are involved in.

A second arena which is not directly related to the CVPIA, but tangential to it, are the discussions that are going on in the Sacramento-San Joaquin-Placer County area concerning the resolution of the water issues in those counties. A regional effort to resolve the water disputes and needs in those areas is underway, and it plays off of some of the work that we're doing with the CVP. And, in fact, the CVP will be part of the solution.

That arena seems to provide, has provided, a very fruitful selection of options which can lead to a resolution of the Stockton East situation, even without a resolution of the Stanislaus River issues. And so the administrative process that we are engaged in in one instance deals directly with it, and then, tangentially, a different process is also providing an opportunity for the resolution of the Stockton East issues.

Mr. POMBO. At what point in this schedule process would some of the ideas, the draft ideas, begin to come out, so that we have an idea of what you're proposing?

Mr. GARAMENDI. I'm going to ask Roger Patterson to take a piece of this. I'll give you a broad overview, I think, of your specific—your general question, and then Roger has some specifics that are of particular importance.

The first phase of the agenda calendar that we gave to you will address many of the pertinent issues for the Stockton East/the Stanislaus River. Our effort is to draft proposals, administrative solutions that will be proposals drawn from the work of the task forces and reflecting their ideas, their solutions, and, hopefully, correctly delineating the zone of reasonable in which a consensus can take place.

Mr. POMBO. So what you're saying—

Mr. GARAMENDI. That will be in the first two—

Mr. POMBO. [continuing]—is, as part of the group one administrative proposal drafts, that at that date—I guess it's May 31—that we should have some idea of what you're looking at doing? I mean, maybe not a final solution, but an idea of what you're looking at?

Mr. GARAMENDI. Well, it will be our interpretation of the work done by the task forces, and it will be, hopefully, a fair reflection of their work. It will also reflect our views and our interpretation of the laws, but more than that, it will be a reflection of the work of the task forces. And, yes, we expect to have that done by the end of May.



Now Mr. Patterson has an additional piece of this that is particularly relevant.

Mr. PATTERSON. Yes, if I could add, Mr. Pombo, I think one thing good has happened out of this process on the Stanislaus, and that is that all of the interests that have been bickering have sort of re-committed themselves to produce a management plan for the Stanislaus itself, and they have set the goal of having that developed by the start of the next water year.

What they are hoping to do is build a baseline operation of New Melones into that plan, and then, depending on our progress on these other issues, fit the (b)(2), which is the 800,000 piece, into that baseline operation. That will allow us to know how much water we need to acquire then to make that part of the puzzle work. And since this decision was made—and they all came to us together, the stakeholders, the senior water rights people, Stockton East, some of the local elected officials, some of the environmental community—they have met at least two, maybe three, times on this. And I think they're making progress. At least they know where they're trying to get to. But we've got to resolve some of these other issues, so they can fit into this piece.

But that's kind of the schedule they're looking at. So we would see some draft products this fall, as far as the management plan, shooting for about March.

Mr. POMBO. Mr. Chairman, my time has expired, but will we have another round?

Mr. DOOLITTLE. Yes, we anticipate we'll have several rounds. So we'll come back.

OK, Mr. Dooley is recognized.

Mr. DOOLEY. Thank you, Mr. Chairman.

And, Mr. Secretary, I guess when I—you know, I have a lot of respect for the effort that you're engaging. I think it's important. I think a lot of us realize that, if you want to provide long-term certainty, it would be important to get as many parties as we can to agree.

However, your standard of consensus is one that concerns me somewhat because, even though you weren't in your position when the CVPIA passed, I don't think there's anyone in this body that would consider that there was a consensus around the passage of the CVPIA. And my concern is this: if you are, in effect, setting a standard of consensus, then you're also almost implying that one party, one stakeholder, if they do not agree, can bring down the whole process. And when I look at your timeline here, I say, well, this looks great on paper, but why should the environmental community, to identify them, who is probably just happy and thrilled with the CVPIA the way it stands, what is their motivation to really participate in good faith in this process?

Mr. GARAMENDI. I will interpret their motivation; I cannot speak for them.

The CVPIA is a law, but in and of itself doesn't deliver the environmental benefits without appropriate implementation. It is the implementation that really provides the environmental benefits. It is, in my view, therefore, in the interest of the environmental community to work very closely with us and to be part of this process in determining how the law is to be implemented, in other words,

these rules that we are working through and the administrative processes that we're working through. To have (b)(2) water 800,000-acre feet, when's it to be delivered? In what quantities? At what time? Those are critical environmental issues that are not answered by the law itself. And so it's in the interest of everybody, and the environmentalists included, to be part of this process, and I think they have seen that happen.

Now one of the things that has also happened is that the CVPIA has provided a substantial motivation. I wouldn't suggest it move. In fact, we oppose movement of the bill, but I must tell you in all honesty that it has been a significant prod to many interested parties to get to the table and to find a solution.

Mr. DOOLEY. I guess I would just ask, in addition, is that you acknowledge that the CVPIA obviously has some prescriptions in statute. I mean, it seems inevitable to me that, even if you do enact some changes in operations or implementation standards through a rulemaking process, isn't it going to be inevitable that there's going to have to be legislation to address some of the issues that are part of CVPIA that are going to be incompatible? Are you assuming that everything can be made compatible?

Mr. GARAMENDI. The answer to that question is a few months ahead of us. It is, as I said a moment ago, premature to come to a conclusion as to the necessity for legislation on any of the issues. There are interest groups, stakeholders, that have a view at the moment, but my view is that we don't yet know. And, specifically, the resolution of the major constellation issues, those 12 major issues, has not been determined. We have the next month and a half or so to pull that together, and then we intend to work that resolution out yet again with the stakeholders, refining and defining the issues.

At that point, which would be later this—several months from now, and it's hard to say exactly when, it may become clear that there is a consensus for legislation. At the moment, there clearly is not. I think Senator Miller in his opening statement artfully said this: there's no consensus for administration; there's no consensus for legislation at the moment. But we're moving in a direction that I'm very well convinced is going to define at least the zone of reasonableness, if not consensus.

Mr. DOOLEY. And some of my constituents were panicked when you said "Senator Miller" there.

[Laughter.]

Mr. DOOLEY. I guess through—

Mr. GARAMENDI. I thought the smile on his face was due to his comments, not just new status.

[Laughter.]

Mr. DOOLEY. I guess through the process you've been involved in—and I have attended some of the meetings that you've had, and we've had great participation—you've had a chance, I think, to understand what some of the concerns of some of the folks from the Central Valley are. In addition, I think you've also become more acquainted with the legislation, which the majority of us on this Committee that are here today have co-sponsored, and the CVPIA.

There has been some people that have said that this legislation is the interest of the contractors backing away from their commit-

ment to provide 800,000-acre feet of water for environmental purposes. Do you see anything in the CVPRA that constitutes anything close to a backing-away from the commitment of 800,000-acre feet?

Mr. GARAMENDI. There's an appropriate time to duck, bob, and weave, and not answer the question directly, and this is the moment. It serves me no purpose at this point, and serves our process no purpose, to characterize your legislation. It seems in all that we sense and have learned over the last several months that there is not a consensus for the legislation, and people can characterize the CVPIA or the CVPRA any way they want, but without a consensus, or at least more—without the thing being in the zone of reasonableness, we're headed for war, and that's not going to solve our problems.

We know that in the present—the progress that we have made presently with regard to the 800,000-acre feet, that it, as written, can work. And we have made substantial progress on that. It has not been easy over these last two months, but we have developed, at least for one year, a resolution of a very, very difficult issue. And I think that that resolution for the first year does show that even that contentious issue of the 800,000-acre feet can work when the State and the Federal Government in their water operations and the urban districts and the environmental community and the water users, agricultural water users, are all seeking a solution. Now not everybody's perfectly happy with the present solution for this year. There's some grumpiness, to be sure, but it's going to work.

Mr. DOOLITTLE. Mr. Radanovich is recognized.

Mr. RADANOVICH. Thank you, Mr. Chairman. And thank you, Mr. Deputy Secretary, for taking the time to be with us.

I'm reminded of an event that we're all real familiar with during the end of last year and the beginning of this year during the Government shutdown when the Legislative Branch made trips to the Executive Branch and were assured by the President that we were going to get a balanced budget, and the President really did want a balanced budget, and making all the assurances, when, indeed, it didn't appear that the President did want a balanced budget. And I can't help but think that this is the same process going on here right now with reform to the CVPRA.

I have a great deal of respect for you, Mr. Garamendi, but I don't view this as consensus building; I view it as stalling, basically. And I think that in a situation that is going to make changes to the CVPIA, you're going to have to choose, I think, between the environmental community and the ag community, because I don't think that you'll be able to satisfy both.

And the problem that I have with the direction that you're taking this legislation is that, if you stall long ago, there will be no legislative fixes. And no legislative fixes in at least five major areas in this bill is going to be totally unacceptable to agriculture. I mean, I know that this is a big issue. I know that California is a big State. I know that there are a lot of diverse interests, but it doesn't take that long to be able to figure out how to solve these problems.

And by stalling and by taking the rest of this year, past the election year and into next year, you're going to end up with having chosen the side of the environmental community, and you're going

to end up with this current bill, which is I think the main intent of this administration, which is basically not to make any changes in this bill and end up with a bill, then, that de-stabilizes agriculture in the State of California, a \$20 billion industry, and also a bill that is biased against the people of San Joaquin Valley.

And I wasn't born yesterday, but it's pretty easy to figure out that this is a stalling technique and is not consensus building, because I believe that the administration has already made up their mind that they're perfectly satisfied with the CVPIA and they have no intention of changing it.

And I wish that, frankly, some people would just come to the table and say that's the case, so at least we know what we're dealing with.

Mr. GARAMENDI. I'm sorry, did you have a question?

Mr. RADANOVICH. That's it; that's my statement.

Mr. DOOLITTLE. Mr. Miller?

Mr. MILLER. Well, Mr. Chairman, first of all, Secretary, let me thank you, one, for undertaking this task of incredible complexity. I would say to those who are concerned about the schedule that you've laid out, in the history of this Department this is a very tight and aggressive schedule. I've been waiting since 1982 for the regulations under reclamation reform. I don't know how long I'm going to keep waiting, but I'm waiting. That's because they are complex, because they deal with all different types of farming operations and with, as Mr. Dooley knows, who was here, with custom farming and a lot of other complexities, as does this legislation.

The problem is that we keep trying to reduce the answer to the problem to one where, as the gentleman from the Central Valley just said, you have to choose between the environmentalists and the big farmers or the farming—agriculture, you said, agriculture. That won't take us very far down the road to a solution. What we've got to try to do, and what this legislation has in place, is a series of mechanisms to allow us to rethink and consider reallocation, to consider markets, and consider mechanisms by which we can respond to the needs of California, and that is not to do so with the sight of disadvantaging one sector of our economy or of our geographical regions at all. It's recognizing that we had essentially, almost like the hearing we had in this room yesterday, we had a single-purpose agency that now, because of the nature of the State, must fulfill multi-purpose demands on it.

Nothing that was planned—it's not evil; it's not any of that. It's just that the world is different; the State is different; the economy is different, and the interests are different. But this process—and I happen to believe, and I don't know that this process will succeed, but I happen to believe it is really the only process by which we can get to the resolution of some of these issues, but this process is not built upon empowering somebody to be at the table in bad faith. Whatever interests we represent or we perceive to represent, it's some of our obligation to keep people in those chairs in good faith.

And it's also very clear—and Mr. Dooley has said this a number of times—that there are some issues that just are not going to lend themselves to an administrative fix: law, lawsuits certainly, for whatever reasons. And that's perfectly understandable, and I ac-

cept that that may be the case. But those are not issues that necessarily one interest gets to self-define. Those are issues that—where there is a recognition that they must be resolved, there's—what did you call it, the zone of reasonableness?—there's reasonable consensus that, yes, we should go to the legislation and get this fixed, whether it's for people in the North Valley, the Central Valley, the southern municipal districts, or the northern, however that turns out, and that's a provision.

But you can't—the history of this project is people sort of self-defining their needs and then running to the Congress and getting them done, and everybody else sort of take what's left over. What we now have is we've redefined the stakeholders in contemporary California. We have people who are going to carry this State into the future. We have very viable sectors of our economy who are deeply interested in this, from agriculture to high technology, to new communities, and they're all there. And we'd like to believe that, when push came to shove, we were able to reach a consensus in Bay Delta, and I like to believe that we can do this. And I would like to believe that this schedule is about holding people's nose to the grindstone here in terms of getting this done, because I guess the Secretary—at some point you could go ahead and write regulations. The law doesn't say you have to have a consensus to write regulations.

You could vote and try to get legislation through the House or something that doesn't have a consensus, and if you were to get that legislation signed by the President, we'd be back here with implementation with all the same problems—or most of the same problems. We'd be back here with all of the lawsuits.

So, you know, this is sort of like, I guess, Secretary Garamendi, you're like sort of the first sheriff in Dodge City: the big problem is getting everybody to check their guns at the door, and a lot of people here have been carrying guns so long this is not what they want to do. But it's the only way we can get this resolved.

And I'll just tell you, however you want to characterize my position or my constituency—and I represent M&I users and people who are looking for more water and a lot of other things in my district, and a whole slough of environmentalists and commercial fishermen, and all who have different competing interests even within that. This is about being here in good faith. This is about seeing whether or not—I guess maybe it's a new generation here sitting at this table; I'm the only holdover—whether or not we can solve this problem differently than it's been solved in the past. And it's not to give people vetoes. It's not to accept bad faith. It's not to accept foot-dragging. It's to accept some orders, you know, about resolving this issue, and the people in that room have the talent to do that.

Mr. RADANOVICH. George, were you born again in the last week or two?

[Laughter.]

Mr. MILLER. No, no. This is—if you go back and read the original remarks, that's what it's about. It was about pulling up some chairs to the table, where decisions were made, where people didn't have chairs before, because the makeup of this Committee, the

Congress, and California didn't allow for that, but that's no longer the reality. And that's what's going on here.

I mean, I just say that, and some people say I should never say we could ever accept any legislative changes. It's hard for me to admit that there may be a slight imperfection in this law.

[Laughter.]

Mr. MILLER. But I'm clearly open to that.

Mr. POMBO. Would the gentleman yield?

Mr. MILLER. But I think this is the screen through which this has to come because I don't see the other thing working out, and I've been here 22 years in this seat listening to this discussion. The other one I don't see working out. It's not only a question of this legislative year, but if you re-ignite this fuse, we're all kind of back to picking up our guns and riding out of town.

Mr. POMBO. Would the gentleman yield?

Mr. MILLER. Sure, I'd be happy to. Thanks.

Mr. POMBO. Would you then admit that maybe what we need to do is believe that everyone's intentions are honorable and maybe take another look at what some of the legislative fixes are that have been proposed, as to whether or not those may solve some of those problems?

Mr. MILLER. I think that's what this—if I understand it, and maybe, John, you want to respond, but, as I understand it, that's part of the process going on here; that there will be some where certainly more than one party agrees, because there's some confluence of interest here on some of these topics that cut across the interests, that you need a legislative fix. You either want it for legal certainty or for economic certainty, or what have you. That will happen, and I'm not arguing that that shouldn't happen, but I'm not sure that it can be done by people coming to us and saying do this and do that; do this in the bill, because what we see there is you have a bill essentially with one slice of California supporting it and all of the rest of them withholding their support or in active opposition.

So I'm saying that is supposed to be part of this process; is that correct?

Mr. GARAMENDI. That's very accurate. We do not say that legislation may not be necessary. Earlier today I said I don't see it at the moment, and I did say very clearly that legislation at this point is premature. It is not—we haven't come to the point yet where there is a clear definition of how legislation might solve the problem.

The current legislation is one-sided and doesn't reflect the political consensus, let alone, in our view, the solution necessary for that particular problem. Now it may come about, as we move through this thing, that there will be a movement toward legislation. That's entirely possible. It's not there today.

We—at this point I see the possibility that the issues can be addressed without legislation, and in some cases addressed with a higher degree of certainty there not being legislation than legislation that is divisive. It is the divisive legislation that is likely to have the shortest life. So if you're going to have legislation that's likely to stand for some time and thereby provide the certainty and reliability that most want, it ought to be consensus.



Mr. DOOLITTLE. Well, as the author of this divisive legislation—

Mr. MILLER. I thought that was me.

[Laughter.]

Mr. DOOLITTLE. It was you. Thank you, George.

[Laughter.]

Mr. DOOLITTLE. As I recall, there wasn't exactly consensus when that passed. It was a legislative majority, however, and, as we all know, those are impactful. And we certainly don't have consensus on this legislation. I, for one, don't believe we ever will have consensus on these contentious environmental issues, which I think is a point raised by Mr. Dooley.

I would like to see if we could work in good faith, and I'm encouraged so far. This is the first time I have heard it admitted, however grudgingly, from both the author of CVPIA and Mr. Garamendi, that some legislative fix is necessary, not necessarily a divisive legislative fix—

Mr. GARAMENDI. May be necessary.

[Laughter.]

Mr. DOOLITTLE. OK, well, may be necessary. I thought I heard "is." I'm going to interpret it as "is." I believe it is necessary. We'll check the record.

In any event, we're seeing movement, which is good. Maybe there is hope here.

Mr. Secretary, let me ask you this: your proposed schedule lists administrative proposal drafts in group one and then group two; group one's due on May 31 and group two a couple of weeks later. Which drafts are included within group one?

Mr. GARAMENDI. The easy ones?

[Laughter.]

Mr. DOOLITTLE. And which might those be?

[Laughter.]

Mr. GARAMENDI. Mr. Patterson has a breakdown for us.

Mr. PATTERSON. Actually, I think we need to talk to the stakeholders and find out what's really easy. We're thinking in the first group we would try to deal with the Trinity River issue, the water conservation issue, restoration fund; we think urban reliability, which is one that's a little hard to get our arms around, but we would like to try to include it in the first group; the issues associated with the refuges, and perhaps water transfers. But we need to go back to California and do some consulting and see if there's agreement that those represent a good group to take on first.

Mr. DOOLITTLE. So this really is what you think and, as Mr. Garamendi indicated, you haven't talked to these stakeholder groups yet. However, this would be your view of how it's going to be divided, and all the other ones are in group two?

Mr. PATTERSON. Yes, that leaves the remaining half for group two.

Mr. DOOLITTLE. Can you just run through the ones you think are under group two?

Mr. GARAMENDI. Mr. Doolittle, Mr. Hall just whispered in my ear a good definitional description of the two different groups. If he could just toss that in here, then if Roger can continue.

Mr. DOOLITTLE. Sure.

Mr. GARAMENDI. I think it would help frame this.

Mr. DOOLITTLE. Yes, that would be helpful.

Mr. HALL. I think what we're really trying to focus on is, first, those things that are operational issues to be answered on an annual basis that we really need to resolve, so that we don't have flareups when we think we have understanding; be clear, so that when we go into the 1997 water year and allocations have to be made and decisions have to be made, and (b)(2) water has to be defined, and all that sort of thing, that we have those. Then there are others that are more in the long-term process, contract renewal, those sorts of things, that we would work on as a second tier.

We just think it's very important that we keep the trust that's being built in this process going, and that there not be confusion in communication, which I think has caused us more of our problems than any actual disagreements, and so we want to focus on those first.

Mr. DOOLITTLE. I caught the first thing, annual operational issues. Just categorize, please, group two again.

Mr. HALL. The group two would be issues that are more long term in nature.

Mr. DOOLITTLE. Not annual?

Mr. HALL. Not annual, but they would be the policy kinds of issues and contract renewals, possibly exchange, water exchange, transfers, et cetera.

Mr. DOOLITTLE. I heard about this 180,000 extra acre feet that Fish and Wildlife were asking for in the delta. I guess that got worked out, but is that the sort of thing that would fall into group one?

Mr. HALL. Yes, sir, because that's part of the communication issue that, in our view, really wasn't an additional request; it was part of the (b)(2) water and the whole process that we're trying to do to limit as much as possible the hit in any given year, and not unless absolutely necessary actually use the entire 800,000. So that part of that communicative process is what we want to try to get the bugs out of the system for because we don't think that that's really benefiting us anything. We need to be clear with each other on the understandings going into the discussions, so that when things are done, it doesn't surprise anybody. And that's what we're trying to do here.

Mr. DOOLITTLE. Mr. Garamendi, Mr. Patterson said Trinity was in group one. What recommendation do you contemplate making to the Secretary to replace any additional water flows that may be sent down the Trinity River as part of the Trinity Restoration Program?

Mr. GARAMENDI. We're not prepared to answer that at this point. The EIS process is still underway and is nearing completion. We await that process, and, also, it is one of the task force issues. We would expect in the next month and a half that will ripen and we'll be able to answer that.

And Dale would like to add to that.

Mr. DOOLITTLE. OK.

Mr. HALL. Let me just add that that process is actively underway for the Environmental Impact Statement, which also includes a review and public comment on the flow study that was done over a



12-year period that looked not just at fish, but at geology, morphology, hydrology, all the different aspects of a flow. Many people think it's just focused on fish, but it really has many aspects. That is in the public review process right now, and going through NEPA as well as public review for the study itself.

Mr. DOOLITTLE. I guess what I'm hoping to hear back is something better than, "well, we gave an extra 400,000-acre feet and learned to conserve or make do with less?" Are we going to hear that, or are you going to give us a solution for replacing the water you send down the Trinity?

Mr. HALL. I think that there is a presumption there that I'm not sure we need to make yet, and that is that the flow study, flow levels, would actually result in a significant reduction in water capacity. Indeed, the preliminary numbers that are out for review have a lesser level for a drought year flow than what are required now and have a ceiling of just over 600,000 or so for a flood year, in which case we generally have much more flow than that going down the river in a flood year anyway.

So I think that it would be fair at this point to allow the process to work and let the scientific community, as well as the public comment on that, before we can actually determine whether or not there would be a loss. I'm not sure we can answer that at this point.

Mr. DOOLITTLE. Well, just so I understand, since this is in group one, will you anticipate having an answer to that by May 31 then?

Mr. HALL. No, sir, we can't answer that question by May 31 because we'd be violating the procedural acts under NEPA and public comment. What we're hoping to get out by May 31 is a representative, along with a proposal, for how we address this issue that has come from the work group that was working on that. What they came up with, their ideas, we would condense that and, without violating law or going out ahead of the administrative procedure act and NEPA process, try and lay down how we would deal with it.

Mr. DOOLITTLE. I'll yield.

Mr. MILLER. In that case, you're not talking about the work group within the Department; you're talking about the work group within the Garamendi organization?

Mr. HALL. Yes, sir.

Mr. GARAMENDI. There's two different things going on here.

Mr. DOOLITTLE. Right. And they obviously are closely related. I mean, if everybody was relatively assured there wasn't going to be a huge increase in flows, I think we'd all breathe a lot easier. What assumption is work group No. 1 going to be making about the Trinity River when they come forward with their proposal?

Mr. GARAMENDI. There are two different issues at hand here. The issue that Mr. Hall and you have been discussing has principally been the Environmental Impact Statement and the work that's going on there. That is in a legal process, and it's underway.

The issue that we're addressing here specifically are some specific requests that we received in our task force dealing with the Trinity River, having to do with participation and input in the operations and decisions that we're going to make. Consistent with the Administrative Procedures Act and our obligations as required

under that law and the EIS that we're engaged in, we will provide people with opportunities to discuss issues.

It really came down to the communications issue, and we want to communicate. And that's the issue that will be dealt with in the next month. It is not the EIS. That is a separate process, and that's underway and resolutions are out there, and we are soliciting public comment at this moment.

Mr. DOOLITTLE. What's your schedule for that? Is that December of this year? I don't recall.

Mr. HALL. Yes, sir, it's in that timeframe.

Mr. DOOLITTLE. So, really the guts of the issue is what's contained in that EIS; right?

Mr. GARAMENDI. Let's say that's the starting point, if there is an issue.

Mr. DOOLITTLE. If there is an issue?

Mr. GARAMENDI. That's correct. We would urge people to take a look at the SEIS and the flows and then take the issue up through the SEIS—oh, excuse me—the EIS process, and there may or may not be an issue at the end of the day from the perspective of each individual group.

Mr. DOOLITTLE. I may want to get back to this, but I'm going to recognize Mr. Pombo so he can get in five minutes. Then we'll go vote.

Mr. POMBO. Thank you.

Mr. Garamendi, one of the contentious issues that is outstanding is dealing with the San Joaquin River and water quality standards, releases, allocations, senior water right holders. We have a number of issues that we have discussed over the past several years on that.

How do you propose to come up with what you call a consensus on dealing with an issue like that?

Mr. GARAMENDI. There are several work groups that are touching on the San Joaquin issues, and each of those work groups have suggested solutions to the problems. The way in which we are going about this is to separate the issues, where possible, and that has happened, and then carefully analyze and take into account the solutions that have been presented.

You are correct in stating that it is very complex and often interest groups in the San Joaquin River Basin are at odds with each other. However, the work groups have, the task forces have, developed some general plans and some specific ideas that we think have merit and that can resolve many of the disputes, if not all of them.

Mr. POMBO. You've received those back already? You've seen possible solutions? There's someone in your group that's seen—

Mr. GARAMENDI. Yes, we are very much aware of the suggestions that have come forth. We've had a specific work group dealing, for example, with the Friant-Kern area and the issues at hand there, the restoration funds, the Friant-Kern surcharge. Each of those have a work group. In fact, that one is headed by an agricultural—a fellow from the agricultural community, and some proposals have been made, and there appears to be an opportunity for at least a zone of reasonableness, if not consensus, in those areas. Now that's not to say everybody's going to be perfectly happy.

Mr. POMBO. I think it's going to be impossible to make everybody perfectly happy. I don't think in this situation that's possible, but one of the issues that we've grappled with in this whole complex of issues is that historically the system has been overallocated, and a lot of people have suggested that one of those—one of the solutions would be new water storage capacity in California to take care of some of these problems, whether they be environmental problems or whether they be the conflict between ag and M&I use.

If that becomes apparent in your working groups, is it possible that you will look at that and come back with a suggestion of a legislative fix on that?

Mr. GARAMENDI. In fact, the answer is certainly yes. Most of the water supply issues are beyond the scope of our immediate work, new water supply issues. However, I'm sure you are aware, and this Committee is aware, of the CALFED process, the Bay Delta Accords, and the working group that's dealing with that. That effort is clearly designed to deal with the point that you raised, and we are all involved in that. And we would expect to see some suggestions and recommendations coming from that CALFED process, the Bay Delta process, very soon. In fact, I think they're down to five or maybe it's ten concepts, and they expect to winnow that down to a short handful, perhaps three, within the next few weeks.

Mr. POMBO. And my final question or statement and question, everybody holds up the Bay Delta Accord because they were able to get differing groups together and get them to agree. In a recent meeting that I had with—I think it was just about every irrigation district, water user, municipality, in my district, they felt that they were excluded from that process of the Bay Delta Accord and felt that they were the ones who ended up paying the price of the agreement, and felt very strongly about that. And they feel that the reason there was an agreement was because they weren't in the room and everybody else was able to agree that they were the ones that were going to give.

I mean, how do you respond to that?

Mr. GARAMENDI. I'm sure that that could elicit a wonderful discussion among those of you on the dais.

Mr. POMBO. We've had the discussion amongst us.

[Laughter.]

Mr. GARAMENDI. I'm sure you have. And I'm amazed that the water users in your district were able to agree on something.

[Laughter.]

Mr. POMBO. You're all too familiar with them.

[Laughter.]

Mr. GARAMENDI. I've had my turn at that.

[Laughter.]

Mr. GARAMENDI. I believe that with regard to our process, we have made every attempt to be as open to every stakeholder that we could find, and we managed to find some that had never been involved before, were not involved. Sure, that's been beneficial, but we found them and they're involved now.

The CALFED process is one that I think also wants to be open, and I would certainly work with you and your constituents to attempt to make sure that they are involved and their views are

heard with regard to the CALFED process. We know that in our process they have been involved.

Mr. POMBO. Thank you.

Mr. DOOLITTLE. We'll stand in recess, then, until the vote is completed.

[Recess.]

Mr. DOOLITTLE. The Subcommittee will reconvene. I'd ask people to take their seats as quickly as possible.

I will announce, for the benefit of the audience, I believe that was our last vote, so we shouldn't have further interruptions to deal with.

The next questioner is going to be Mr. Dooley.

Mr. DOOLEY. Thank you, Mr. Chairman.

And I guess one issue on which I think there is broad consensus on both by the agricultural and environmental community is a concern that is related to the most efficient use of the restoration fund and the accounting for that. I think there's a justifiable concern on behalf of both of those stakeholders that this sizable financial commitment that is made and is part of the CVPIA, that we don't have a process in place yet which is ensuring that those dollars are going out in an expedited fashion, and they also are going out in a manner which, you know, that everyone is comfortable in terms of the prioritization of use.

And I'd just be interested in what the Department of Interior is doing to address that concern.

Mr. GARAMENDI. We understand the concern. It certainly was present a year ago. In the last several months substantial progress was made through the working groups and through the specific efforts of the Bureau and the Department of—excuse me, the Fish and Wildlife Service.

I'd like to have Dale Hall give you a complete answer.

Mr. HALL. About a year ago, we were preparing for you, in response to the act, a five-year plan and a budgeting scenario as to how we would implement the restoration fund and the projects and the priorities, et cetera. We sent that to the stakeholders, including the roundtable group that is made up of a mixture of environmental and agricultural and municipal interests, and asked them for their input, and they didn't like it much. And we said fine. So we halted the process, if you will, and asked you for dispensation, so that we could work with them, and you granted it.

And since that time, we have been working with the roundtable to come up with those plans, both in the priority of actions to take, how the funds would be expended, how we would do things, so that we could provide that to you. We do not have that completed yet, and I will sort of defend the roundtable group here a bit, if I may, because with so many other issues and trying to build consensus they have admitted to us that they have not had the time, because they're spread thin, to put in the time on this that they should. And we're not pushing them real hard when they tell us that because we do appreciate their efforts in other areas. But we are committed to continuing to work with them and have that process come forward, and the reports to Congress would be a reflection of that consensus and that way of operating.

In addition, because of the time constraints associated with that, we've been in discussions with them about possibly providing some funding so that they could have some help in drawing these things together. We are in this together, and if it is legitimate—and we're exploring that—to provide some funding for some staffing support in contracting, or whatever, to help them get their views to us in a consolidated manner, then we think that, provided it's legal, that that's something that may be beneficial, and we're working with them on that as well.

Mr. GARAMENDI. I think Mr. Patterson has a couple of things to add.

Mr. PATTERSON. I think this has been one of the major concerns since the day the act passed, and I think we've made a lot of progress and I would admit that we've got progress to make. It's frustrating to us to have people not convinced that we're spending the money in the best way because this money is significant to those from which it comes.

We did spend a full day in March where we had the various team leaders on issues come in, and they made a very detailed presentation to the restoration fund roundtable about their plans and their schedules and their costs, and we are now waiting to hear back some critique of those. It went well. The feedback was all that that was a good process and will lead us to a better place, and we're waiting to hear back from that. And we intend to modify accordingly. We know we've got a lot to learn from the roundtable on this, and they're busy people. They've got lots of irons in the fire, and to the extent they can bring some focus to this, it's going to be beneficial to us.

Mr. DOOLEY. Just my last question, and it's probably as much a comment, is: I know, Mr. Secretary, you and both Mr. Patterson and Mr. Hall understand that while we have been spending most of our time here talking about the CVPIA, all these water issues, whether it's Bay Delta Accord or the RRA regs, are all really intertwined, and certainly the process of your process is going to continue to depend on the commitment of the stakeholders to participate.

And I would just say this: a lot of us, we're very pleased with the work that the Bureau of Reclamation did on the RRA. We know that they, after they released the draft proposals, they analyzed and took in under advisement the thousands of comments that were issued. We are very pleased with their proposed final rules and the drafting of and their identification of the preferred alternative, which I would understand would be the recommendation of the Bureau of Reclamation, and that's what should be implemented as the final regs.

Obviously, many of the folks that I represent would be interested in seeing that final rule published as soon as possible and those released, and I hope that is one of the higher priorities of the Department.

Mr. GARAMENDI. We appreciate your comments. We are pondering.

Mr. DOOLITTLE. Mr. Miller is recognized.

Mr. MILLER. Thank you.

And, again, I want to thank you, Mr. Secretary, for your effort. And I don't want this, because of the makeup of this Committee, to suggest that the only issues on the table are those that are between the environmental community and the ag interest. There are a lot of other interests that you have brought, that Senator Feinstein and the Secretary and others have brought, to this—to the table here, the fisheries' interest and the municipal interest and the geographical interest and the Indians and their concerns with the operation of this.

One of the things that we have, obviously, discovered over the last 20, 25 years is that the ramifications of the operation of this project far exceed sort of the end of the flow of the water, that they go up and down our coast with the interest of both the commercial fishermen and those who are sports fishermen and those who cater to those interests—not an insignificant interest in terms of the importance of tourism and the importance of recreation and of local economies on the north coast and south of the Golden Gate.

At the same time, we can lump the environmental interests together, but we also know that they are very diverse in their concerns because many of them are representative of both urban and suburban interests and of recreational interest and the more traditional concerns over how we use and allocate resources in our State. I guess, in short, I'm telling you, you have your work cut out for you, but you know that by now. We stand ready to give a good faith review to the work product of this and where necessary, and if there is a consensus and it is carried out with the intents and purposes of this act, we stand ready to review that if it turns out that legislation is necessary. But, as I said in my opening statement, that is not about the self-selection of provisions to repeal key components of this act. That will not be acceptable and that's simply—I hope it's apparent to everyone by now that that will not work; that will not be a successful legislative strategy.

And, as I said in my earlier remarks, you have set out an ambitious schedule. I think we're entitled to that schedule in California because there's a lot at stake in the resolution of this problem, and I'm sure that this Committee will continue its interest in this matter and oversight of this schedule. So I hope that we can live within the confines of it, and whatever we can do to help, we certainly will make ourselves available.

Thank you.

Mr. DOOLITTLE. Thank you.

Mr. Secretary, you've used the term "zone of reasonableness" various times. I learned about the zone of duty or the zone of danger in the Palsgraff case in law school. I don't remember hearing about the zone of reasonableness, but I gather by that you mean something less than complete consensus. Is that correct?

Mr. GARAMENDI. I would like very much to find complete consensus on each of these issues, and perhaps we will. There is some evidence that that might occur on some, if not all.

The zone of reasonableness is a term that I've come to like because it's so wonderfully vague.

[Laughter.]

Mr. GARAMENDI. But it also tends to keep people wanting to search for it, and it's really a definition of what people can accept,



not necessarily—certainly not necessarily what they want, but what they can accept.

Mr. DOOLITTLE. OK.

Mr. GARAMENDI. What they can live with.

Mr. DOOLITTLE. Let me ask you, one of the ideas being discussed with respect to contract renewals is that the quantity of water the farmer could expect after the first 25 years would be based on a reasonable and beneficial use criteria. However, it's also my understanding that this criteria would not necessarily be the same as the criteria used by the State Water Resources Control Board. Is that understanding, indeed, correct, and if it is correct, how would this different criteria be established?

Mr. GARAMENDI. It is not correct. The words are not defined at this point, and, therefore, they may or may not be the same as the State definition. It is a concept that is not defined.

Mr. DOOLITTLE. But you are, then, acknowledging that a concept is being contemplated that would not abide by the State water law, but that could use different criteria than they use?

Mr. GARAMENDI. No, I'm not saying that at all. I'm saying that we have not defined the term on our side. We have said very clearly that it is our opinion—certainly mine and I—certainly my opinion that the agricultural community has to have a—I'm trying to use the same words I used in Bakersfield—has to have certainty. They need to know what their water supplies are going to be over a long period of time. Otherwise, they are not likely to make the investments to keep the economy moving along.

I also understand, I said earlier today, speaking to this issue, that there are competing interests. So that that certainty needs to be within the context of those competing interests, and we think we can find that. The words that you've used here are not defined at this point. They may be defined the same as the State or there might be something slightly different.

Mr. DOOLITTLE. Is there any consideration being given to having a third party make the determination, different than either the Federal or the State government?

Mr. GARAMENDI. We welcome any good solution to this—and good is not necessarily what I think is good; it's what works in that zone of reasonableness. If you've got an idea of a third party and how it might be done, we'd welcome you at any of our task force hearings.

Mr. DOOLITTLE. Well, that wasn't my idea. It was my understanding that this was an idea being kicked around by the Bureau staff. And I'm just trying to verify whether this is, in fact, one of the ideas being considered or not.

Mr. GARAMENDI. That idea has been presented. It was one of many ideas to help define or help work through this particular issue that you've raised. So it is on the table and it is being discussed.

Mr. DOOLITTLE. OK. With reference to the power provision, without a legislative remedy to the present law, how do you propose to keep power users from absorbing the \$20 million increase in restoration funding in 1998?

Mr. GARAMENDI. I'll ask Roger Patterson to answer the question.

Mr. DOOLITTLE. OK.

Mr. PATTERSON. The issue of power revenues into the restoration fund is one the roundtable is working on with the goal of trying to levelize and provide less fluctuation to the power customers. They have some ideas I think very similar to what we have talked with staff about, whereby we could achieve the goal to reduce fluctuation and at the same time not reduce income to the fund as a result of that. And they have some good ideas and I think are making some progress and believe that there's a way to find that through some kind of an administrative process.

But it seems like since the act has passed the fluctuation in water supplies and revenues to the fund has been at the very, very top and at the very, very bottom, and as a result, the power customers have seen that swing that is really undesirable to them and understandable to us why that's the case.

Mr. DOOLITTLE. I think you've already answered my second question, but do you think the power users have paid a disproportionate amount to the restoration fund since it was set up?

Mr. PATTERSON. In certain years clearly that's the case, and there's no such things as a normal out there anymore, and that's the issue we're trying to deal with.

Mr. DOOLITTLE. Thank you.

Mr. Miller?

Mr. MILLER. No, Mr. Chairman.

Mr. DOOLITTLE. OK, Mr. Dooley?

Mr. DOOLEY. No, Mr. Chairman.

Mr. DOOLITTLE. I would like to thank our witness and those at the table assisting him. I think the information that has been developed has been very helpful. We will, no doubt, have a few remaining questions. We'd like to submit those in writing and request that you respond.

And, with that, we'll conclude this first segment of our hearing today. Thank you very much for attending.

Mr. GARAMENDI. Thank you, Mr. Chairman.

[Whereupon, the Subcommittee proceeded to other matters; and the following was submitted for the record:]



Honorable John Garamendi  
Deputy Secretary  
Department of the Interior

before the  
House Subcommittee on Water and Power Resources

April 18, 1996

Thank you for the invitation to appear before the Subcommittee. I appreciate the opportunity to discuss the progress the Department has made at our stakeholder meetings in California.

When President Clinton visited the Central Valley last September, he met with farmers and listened to their concerns. Following his meeting, he directed me to bring the stakeholders together to work out their differences. Beginning last September, the Department held the first in a series of monthly sessions at various cities in California. Designed to bring stakeholders together to develop consensus-based solutions, the meetings have been very successful. We have had excellent participation in the process. At our first session in Sacramento, approximately 90 people came to discuss issues and develop solutions. Subsequently, we met with about 800 stakeholders in Fresno in October, and in November and December we held forums in Oakland attended by approximately 160 and 120 people respectively. This year, about 80 people attended the January session in Willows; 350 people appeared at the Bakersfield session in February, and last month 75 people came to Sacramento for the stakeholder meeting.

The forums have given the stakeholders opportunities to voice their concerns and suggest solutions. In addition to the forums, we created work teams tasked with developing solutions and consensus on issues. On each team, there are representatives from agriculture, urban agencies, and the environmental community. They have volunteered their time and effort to work together and find common ground. The Bureau of Reclamation and Fish and Wildlife Service staff have spent many hours providing technical advice and helping in crafting solutions.

During the next month, we intend to develop common ground frameworks to outstanding key issues identified by the stakeholders. These frameworks will be based on what we have heard at the stakeholders meetings and will serve as the focal point for further discussions to bring these issues to consensus solutions. We plan to work as expeditiously as possible to resolve these matters. The Department would be happy to keep the Subcommittee informed of our progress in developing the solutions.

(over)

The Administration continues to believe that a consensus-based process is the key to resolving the complex water issues in California. Through consensus, the Administration was able to bring together stakeholders from all groups involved in California's water issues, and develop the Bay-Delta Accord, a framework for the management of significant quantities of water to protect the resources of the San Francisco Bay, Sacramento and San Joaquin River Delta and Estuary. Without consensus, we will return to water wars which will ultimately have a detrimental effect on California's economy and the environment. Consensus-based efforts are bringing back needed balance, financial stability, and certainty in California water issues.

Finally, Mr. Chairman, the Administration continues to believe that H.R. 2738 is premature and unnecessary. We believe any solution to water issues in California must be consensus-based.

Thank you again for the opportunity to present the Administration's views. I would be pleased to answer any questions you may have.



## United States Department of the Interior

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Washington, D.C. 20240

### **SUPPLEMENTAL INFORMATION FOR HOUSE SUBCOMMITTEE ON WATER AND POWER RESOURCES**

**April 18, 1996**

#### **PROPOSED CVPIA IMPLEMENTATION SCHEDULE**

Meetings with key stakeholder groups and individuals	4/22 - 6/14/96
Administrative proposal drafts (Group 1) released to stakeholder workgroups	5/31/96
Administrative proposal drafts (Group 2) released to stakeholder workgroups	6/14/96
Summary and schedule of specific proposed administrative actions released	6/14/96
Meetings with stakeholder groups on draft administrative proposals	7/1 - 7/19/96
Revision of issue papers based on stakeholder comments	7/22 - 9/16/96
Draft PEIS filed	8/96
Updated Notice of Proposed Rulemaking published	8/1/96
Final summary and schedule of administrative actions released	9/16/96
Final PEIS filed	12/96
Draft rules published in Federal Register	12/96
Final rules published in Federal Register	4/97

## CONTENTS OF ADMINISTRATIVE PROPOSALS

- I. Description of relevant portion of CVPIA
- II. Summary of major issues, with description of different stakeholder views, concerns about issues
- III. Summary of stakeholder workteam progress on issues: team members and chair; lists of documents prepared by team; issues already resolved; areas of emerging consensus
- IV. Discussion of Interior's views on issues
- V. Proposed Interior actions to resolve issue: summarize conceptual approach; describe rationale for proposed actions; described specific proposed actions (e.g., prepare a new policy memorandum, finalize a policy memorandum, develop guidelines, revise criteria, include in rulemaking, etc.)
- VI. Give schedule for all actions
- VII. Describe proposal for ongoing stakeholder process on this issue



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